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E-Filed 11/9/15

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUVENTINA MATA, et al.,

Plaintiffs,

v.

MANPOWER INC. / CALIFORNIA
PENINSULA, et al.,

Defendants.

Case No. 14-cv-03787-LHK (HRL)

**ORDER ON DISCOVERY DISPUTE
JOINT REPORT 2**

Re: Dkt. No. 37

Plaintiffs Claudia Padilla and Lesli Guido (“Plaintiffs”) bring this wage and hour class action against Defendants Manpower, Inc./California Peninsula, Manpower US Inc., ManpowerGroup Inc., and ManpowerGroup US Inc. (“Defendants”). The parties filed discovery dispute joint report (“DDJR”) 2 because they disagree over whether Defendants have fully provided the disclosures required by Federal Rule of Civil Procedure (“FRCP”) 26(a)(1)(A).

In particular, Plaintiffs argue Defendants failed to provide: (1) the addresses and phone numbers of the disclosed potential witnesses; (2) clear descriptions of the discoverable information that each witness might possess; (3) the names and addresses of putative class members who might possess information about liability and damages; and (4) adequately clear descriptions of the documents that might support Defendants’ defenses. Dkt. No. 37 at 7-8. Plaintiffs also argue that Defendants refuse to produce witnesses for depositions. Dkt. No. 37 at 2. Plaintiffs therefore request an order under FRCP 37(c) that Defendants shall not be permitted to use “any information or witness not timely disclosed for any purpose, including: to supply evidence on a motion, at a hearing, or at a trial.” Dkt. No. 37 at 9. Defendants respond that: (1) there is “no basis” to request the addresses and phone numbers of potential witnesses, especially

1 when Plaintiffs' witness disclosures under FRCP 26(a)(1)(A)(i) are similar to Defendants'
2 disclosures; (2) even if Defendants' disclosures are not technically adequate under FRCP
3 26(a)(1)(A), Plaintiffs have not been prejudiced because past discovery conducted in a similar case
4 has already provided Plaintiffs with the information they need in order to design their discovery
5 requests in this case; (3) FRCP 26(a)(1)(A) does not require a party to explain how certain
6 documents will play into specific legal theories; and (4) sanctions are not appropriate because
7 Defendants have made good-faith attempts to satisfy Plaintiffs' concerns. Dkt. No. 37 at 3-4, 9-
8 10.

9 Discussion

10 It appears that Defendants and Plaintiffs have, together, failed to adequately disclose the
11 contact information of their potential witnesses in their initial disclosures. FRCP 26(a)(1)(A)(i)
12 requires each party to provide "the name and, if known, the address and telephone number of each
13 individual likely to have discoverable information . . . that the disclosing party may use to support
14 its claims or defenses, unless the use would be solely for impeachment[.]" Defendants have
15 disclosed several specific employees who "may have" discoverable information, but Defendants
16 have not disclosed the addresses or telephone numbers of those employees. Instead, Defendants
17 have directed Plaintiffs to contact those potential witnesses through Defendants' lawyers. Dkt.
18 No. 37-1 at 4-5. Plaintiffs also disclosed several potential witnesses and, instead of providing
19 addresses and phone numbers, directed Defendants to contact those witnesses "through counsel for
20 Plaintiffs." Dkt. No. 37-2 at 3-4.

21 Nevertheless, sanctions under FRCP 37(c) are not triggered if inadequate initial
22 disclosures are harmless. The parties have not argued that their technical violations of FRCP
23 26(a)(1)(A)(i) have harmed them in any particular way. At most, Plaintiffs claim in a footnote that
24 Defendants have not agreed to either produce witness addresses or else to produce witnesses for
25 depositions. Dkt. No. 37 at 2 n.1. Plaintiffs do not argue, however, that Defendants have actually
26 failed to facilitate compliance with any particular subpoena. And Defendants assert they have
27 "agreed to accept service of any deposition notice" and that they are "arranging for the
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1 depositions" requested by Plaintiffs. Dkt. No. 37 at 9. The court concludes the parties' mutual
2 failure to disclose witness addresses and phone numbers has been harmless; the court therefore
3 shall not issue FRCP 37(c) sanctions on the basis of that mutual failure.

4 Defendants are not required, however, to produce the name, address, and phone number of
5 each putative class member. An order may modify the presumptive disclosure requirements of
6 FRCP 26(a)(1)(A), and the court has previously ordered that certain procedures shall be used to
7 produce the contact information for a small percentage of the putative class rather than for every
8 putative class member. Dkt. No. 83 at 3. The court nevertheless cautions Defendants, in light of
9 FRCP 37(c), that it might be prudent to also produce the contact information of any specific
10 putative class member whose testimony might be relied upon by Defendants later, even if a
11 separate discovery order does not require Defendants to produce that putative class member's
12 contact information.

13 The court agrees with Defendants that they have adequately disclosed the categories of
14 documents their defenses might rely upon as required by FRCP 26(a)(1)(A)(ii). Plaintiffs
15 specifically object to the vagueness of certain categories—for example, "related documents" and
16 "documents that applied to Plaintiffs"—but these direct quotations strip out key words and
17 misrepresent the higher degree of specificity that exists in Defendants' disclosed document
18 categories. The nebulous category of "documents that applied to Plaintiffs" actually refers to the
19 more informative category of "Defendants' policy documents that applied to Plaintiffs[.]" Dkt.
20 No. 37-1 at 5. Likewise, the vague category of "related documents" actually references the
21 significantly more specific category of "Plaintiffs' personnel files and related documents[.]" Dkt.
22 No. 37-1 at 5. The categories disclosed by Defendants provide Plaintiffs with adequate
23 descriptions of the kinds of documents that might support the defenses raised by Defendants, and
24 Defendants need not provide a more detailed set of categorical descriptions.

25 Even if Plaintiffs are correct that documents in the disclosed categories could not possibly
26 support certain defenses raised by Defendants, Plaintiffs do not argue that Defendants have
27 actually attempted to rely upon a document that belongs to a surprising, undisclosed category. To
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1 the extent that Plaintiffs request a preemptive FRCP 37(c) sanction based on the speculation that
2 gamesmanship might occur in the future, the court denies that request as premature.

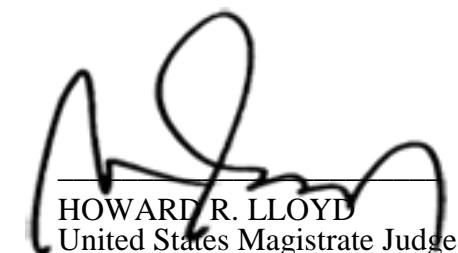
3 Defendants have also adequately described the information that might be discoverable
4 from each disclosed potential witness. FRCP 26(a)(1)(A)(i) requires a party to disclose “the
5 subjects” of the discoverable information that a potential witness may possess. Defendants
6 initially disclosed that each potential witness might have “information regarding liability and
7 damages.” Dkt. No. 37-1 at 4-5. Those generic disclosures may have been inadequate, but
8 Defendants cured any such defect with an amended initial disclosure statement. Defendants’
9 amended statement describes, for each witness, specific and relevant information that the witness
10 is likely to possess. For instance, one particular witness “may have information regarding
11 Defendants’ operations in the West Division, including procedures relating to the hiring,
12 onboarding, and off-boarding of their temporary associates.” Dkt. No. 37-1 at 12-13. Defendants’
13 amended disclosures adequately describe the discoverable information that each witness might
14 possess.

Conclusion

15 The parties jointly failed to adequately disclose witness contact information, but that
16 failure was harmless.¹ Defendants’ other initial disclosures complied with FRCP 26(a)(1)(A).
17 The court shall not issue sanctions under FRCP 37(c).

IT IS SO ORDERED.

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19 Dated: 11/9/15
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26 HOWARD R. LLOYD
27 United States Magistrate Judge
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¹ The court hopes the first two DDJRs are not initial salvos that foreshadow a discovery war. If the parties think that might be the case, the parties are urged to forthrightly advise the court so that it may consider whether to appoint a special master.